

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

SUSAN AFONSO,

Plaintiff,

v

1:11-CV-303

WELLPOINT, INC.,

Defendant.

**Thomas J. McAvoy,
Sr. U.S. District Judge**

DECISION & ORDER

Magistrate Judge Treece issued a Report-Recommendation dated April 5, 2011 recommending that (1) Plaintiff's complaint pursuant to 42 U.S.C. § 1983 be dismissed pursuant to 42 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief can be granted, and (2) Plaintiff be permitted to amend Complaint to state a violation under the FMLA, 29 U.S.C. § 2601 et sec.

Plaintiff filed timely objections to the Report-Recommendation by filing a copy of the U.S. Department of Labor Wage and Hour Division's Fact Sheet #28. Plaintiff then filed additional, untimely, objections on April 28, 2011.

When objections to a magistrate judge's Report-Recommendation are lodged, the Court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." See 28 U.S.C. §

636(b)(1). After such a review, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.”

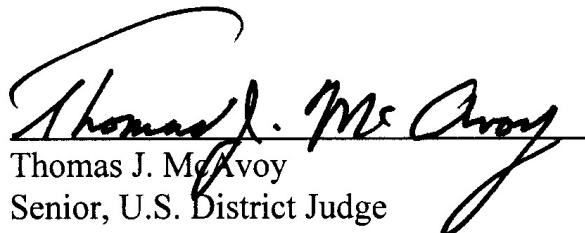
Id.

Having reviewed the record *de novo* and having considered the issues raised in the Plaintiff’s objections, this Court has determined to accept and adopt the recommendation of Magistrate Judge Treece for the reasons stated in the Report-Recommendation.

It is therefore **ORDERED** that Plaintiff’s Complaint be **DISMISSED**. Plaintiff is granted leave to file an amended Complaint in accordance with the instructions set forth in Magistrate Judge Treece’s Report-Recommendation. Any such amended complaint shall be filed within thirty days of the date of this Decision and Order. **In the event Plaintiff does not file an amended complaint within thirty days, this case shall be closed without further order of the Court.**

IT IS SO ORDERED.

Dated: June 15, 2011


Thomas J. McAvoy
Senior, U.S. District Judge